

## § 32.34

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under a grant or cooperative agreement for basic or applied research in a nonprofit institution of higher education or a nonprofit organization whose primary purpose is conducting scientific research. Such property is “exempt property.”

(2) As a matter of policy, DoD Components shall make maximum use of the authority of 31 U.S.C. 6306 to vest title to exempt property in institutions of higher education, without further obligation to the Government, to enhance the university infrastructure for future performance of defense research and related, science and engineering education.

(3) DoD Components may establish conditions, in regulation or in award terms and conditions, for vesting title to exempt property. Should a DoD Component not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

### § 32.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the DoD Component that made the award. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) First, activities sponsored by the DoD Component that funded the original project.

(2) Second, activities sponsored by other DoD Components.

(3) Then, activities sponsored by other Federal agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DoD Component that financed the equipment; second preference shall be given to projects or programs sponsored by other DoD Components; and third preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the DoD Component that financed the property. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the DoD Component that financed the equipment.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned property shall include all of the following:

(1) Records for equipment and federally-owned property shall be maintained accurately and shall include the following information:

(i) A description of the equipment or federally-owned property.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment or federally-owned property, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal

participation in the cost of the equipment (not applicable to property furnished by the Federal Government).

(vii) Location and condition of the equipment or federally-owned property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the DoD Component that made the award for its share.

(2) Property owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment and federally-owned property shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment or federally-owned property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment or federally-owned property. Any loss, damage, or theft of equipment or federally-owned property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the DoD Component.

(5) Adequate maintenance procedures shall be implemented to keep the equipment or federally-owned property in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards.

(1) For equipment with a current per unit fair market value of \$5,000 or more, the recipient may retain the

equipment for other uses provided that compensation is made to the DoD Component that originally made the award or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment.

(2) If the recipient has no need for the equipment, the recipient shall request disposition instructions from the DoD Component. The DoD Component shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(i) The grants officer, in consultation with the program manager, shall judge whether the age and nature of the equipment warrant a screening procedure to determine whether the equipment is useful to a DoD Component or other Federal agency. If a screening procedure is warranted:

(A) The DoD Component shall determine whether the equipment can be used to meet DoD requirements.

(B) If no DoD requirement exists, the availability of the equipment shall be reported to the General Services Administration by the DoD Component to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the DoD Component that made the award an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(iii) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable

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shipping or interim storage costs incurred.

(iv) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoD Component that made the award for such costs incurred in its disposition.

(h) The DoD Component may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing. For exempt property, in accordance with §32.33(b)(3), note that this identification must occur by the time of award, or title to the property vests in the recipient without further obligation to the Government.

(2) The DoD Component shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with award funds and federally-owned property. If the DoD Component fails to issue disposition instructions for equipment within the 120 calendar day period, the recipient shall apply the standards of paragraph (g) of this section.

(3) When the DoD Component exercises its right to take title, the equipment shall be subject to the provisions for federally-owned property.

### § 32.35 Supplies.

(a) Title to supplies shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to

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provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

### § 32.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DoD Components reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including Governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, “Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DoD Component that made the award shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DoD Component that made the award obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the